

### **III. Remarks**

To highlight the distinction of the above-referenced invention over the prior art as interpreted by the Examiner in the Office Action of December 28, 2004, Paper No. 20041207, the specification and claims were amended as set forth herein. Claims 1-3, 7, 8, and 12 were amended to more clearly define the subject matter of the invention and to place all of the claims remaining in the application in condition for allowance.

The specification was amended herein to correct matters of a grammatical and typographical nature, as well as to clarify what is clearly shown in the Figures of the invention. No new matter was presented and such amendments are deemed unobjectionable. Entry thereof is respectfully requested.

In the above referenced Office Action, the Examiner rejected Claims 1-3, 5, 7, 8 and 21 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. It is the Examiner's opinion that the earlier submitted claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed, had possession of the claimed invention. Specifically, the term "longitudinally non-foldable" of Claims 1-3, 5, 7 and 8 and "non-foldable planar" of Claim 21 are not found in the specification and have not been discussed in the eleven pages of remarks by Applicant.

In response to this rejection, it is respectfully requested that this rejection be withdrawn for the reason that it is amply clear from the specification when considering the specification as a whole as well as specifically, the recitation set forth at page 6, lines 10-14, lines 20-24; page 7, lines 10-15; page 8, lines 13-17; page 11, lines 9-23, and especially,

Figures 6-9 that the walls of the loop enclosure do not fold upon itself in either longitudinal or latitudinal direction. A person skilled in the art will quickly realize especially in view of the recitation on page 11, that the prior art of this same inventor namely, U.S. Patent No. 4,380,836 as well as 4,493,118 teaches bi-fold type folds which as clearly set forth in the background and history of the invention as a prior art problem identified by the inventor in the transportation of these portable toilets that is attempted to be solved by the present invention. Accordingly, when the specification is read as a whole by a person skilled in the art it becomes readily clear that the purpose of the walls is to avoid bi-fold doors so that they may be simply folded in two layers and provide significant advantages in terms of reduced transportation costs as well as labor to assemble and disassemble the portable toilets on site. It is therefore respectfully requested that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn for the reason that the specification does indeed contain a written description of the invention, and of a manner and process of making and using it in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains to make and use the same.

A final comment is in order with respect to the rejection under 35 U.S.C. §112, first paragraph, in the rejection, the Examiner indicated that the objected to terms were not discussed in the eleven pages of remarks by Applicant. Applicant's attorney wishes to specifically point the Examiner to pages 16-19 of the remarks to reflect that this terminology was indeed discussed in the argument of the last Office Action and not completely neglected as alleged by the Examiner.

In the above reference Action, the Examiner rejected Claims 1, 2, 5, 7, 10, 12, 15, 17 and 21 under 35 U.S.C §103 as being unpatentable over the art "for the reasons

advanced in the previous Office Action". Further, the Examiner rejected Claims 3, 8 and 13 under 35 U.S.C. §103(a) as being unpatentable over the art as applied in Claim 1 above, and further in view of Braxton '836 "as set forth in the previous Office Action".

For purposes of brevity, the undersigned wishes to incorporate herein by reference the argument set forth in the previous response beginning at page 12 to page 22 in response to the rejection. The various comments made by the Examiner beginning at page 2 and continuing on to page 3 will be specifically addressed in the following.

The Examiner indicates that the arguments alleging failure to set forth a prima facie case of obviousness are not well taken. Further, the Examiner considers the provision of one portable privy with a floor suggested by another portable privy would be textbook as mandated by the Deere decision.

Applicant's attorney wishes to take issue with this opinion for the very reason that the requirements to establish a prima facie case of obviousness have been clearly set forth *In re Jones*, 21 USPQ2d 1941(Fed. Cir. 1992). Wherein the court found that to establish a prima facie case of obviousness the Patent Office must; (1) set forth the differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modifications would be obvious. To satisfy step (3) above, the Patent Office must identify where the prior art provides a motivating suggestion, inference or implication to make the modifications proposed in step (2) above.

The only motivation for providing the combination of a portable toilet shelter wherein a looping closure can be folded into two layers for purposes of transportation, the

loop enclosure including a floor, is Applicant's own application. Clearly, the Dahl '256 reference does not disclose nor teach using a floor in combination with the collapsible enclosure. As set forth above, only Applicant's application provides the motivation to incorporate the floor by Tegg et al. into the Dahl disclosure. Even if this is accomplishable, since the Dahl disclosure teaches a wall that is foldable upon itself and upon disassembly results in a collapsible enclosure of four planar panel thickness which is completely contrary to the teachings of Applicant's invention which clearly teaches a disassembly that results in a stack of only two planar panel thickness.

Concerning Claim 21, it is not clear what the Examiner means by "as it is not separately argued by the Applicant". Frankly, Claim 21 was new in the latest response and has been rejected under 35 U.S.C. §103 by the Examiner on the basis of "for the reasons advanced in the previous Office Action". Since Claim 21 was not in the case prior to the last response it is unclear how to respond to the Examiner's comments with respect to Claim 21. It is further unclear with respect to the Examiner's comments regarding Claim 12 that "it as well is not separately argued for". Frankly, this language is not understood by the undersigned since Claim 12 is but a further delineation of the invention set forth in the specification from that as delineated in the other independent claims. Accordingly, all of the arguments presented in the last response were for the patentability of Claim 12 as well as the remainder of the claims in the application. It is therefore respectfully requested that the Examiner clarify the comments with respect to Claim 12 as well as 21 to enable the undersigned to address whatever problems there may be with these claims. The Examiner's final comment with respect to Claim 17 is not well taken simply because it is clear that the invention as set forth in the Dahl reference

teaches a portable toilet which upon disassembly is folded into a four planar layer thickness which is completely contrary to the requirements of Claim 17 since Claim 17 clearly sets forth that the Applicant's invention upon disassembly is folded into a two layer thickness disassembled condition which can be transportable and substantially reduce costs as compared to earlier prior art portable shelters.

One final comment is in order with respect to the Examiner's opinion that the various states of folding argued by the Applicant are nothing more than intended use states and do not define "in this apparatus claim environment".

In response to this comment, it is clear, that each and every independent claim has been set forth in element by element format with the appropriate structural interrelationship between elements in order to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Note that independent Claims 1, 7, 12 and 21 have no functional language in the preamble. The only functional language used in these claims is in the whereby clause which is completely permissible in claim drafting and in fact this type of functional language breaths meaning into the claims. Accordingly, it is not well taken that the Examiner attempts to consider this mere language of intended use states and completely neglect the element by element recitation of the invention with appropriate structural interrelationship to particularly point out and distinctly claim the subject matter which the inventor regards as his invention.

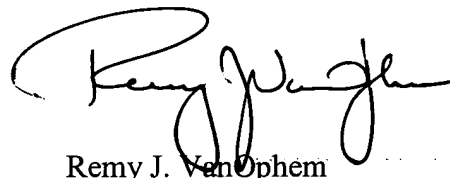
In view of the final status of the official Action, it is respectfully requested that this response be entered in that it has attempted to resolve every single issue remaining in the

application. Accordingly, if the Examiner feels that he is not persuaded by the arguments, it is respectfully requested that the amendment be entered at least for purposes of appeal.

If the Examiner has any questions with respect to any matter now of record, Applicant's attorney may be reached at (586) 739-7445.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.



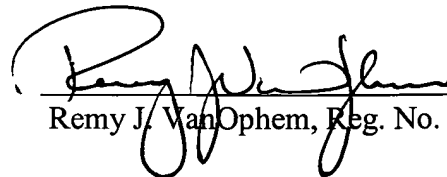
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Date: February 28, 2005



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